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HUMAN RIGHTS COMMITTEE

Report on the informal meeting on procedures

Note by the Secretariat

The members of the Human Rights Committee met outside formal Committee session at the Henry Dunant Institute in Geneva, Switzerland, on 27 and 28 July 1996 to discuss possible changes in the Committee's procedures. The agenda of the meeting was based on recommendations to that effect proposed by an informal working group on procedures which had been established at the fifty-fifth session and which had met in February 1996 shortly before the Committee's fifty-sixth session. The annexed report was discussed at the Committee's fifty-eighth session and the relevant decisions of the Committee were contained in the Committee's report to the General Assembly at its fifty-second session (A/52/40, paras. 32-44). At its sixtieth session, the Committee decided to have the report reproduced as an official document.

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Annex

REPORT OF THE MEETING OF THE MEMBERS OF THE HUMAN RIGHTS COMMITTEE TO DISCUSS REFORM OF THE PROCEDURES OF THE COMMITTEE

(Geneva, 27-28 July 1996)

Inroduction

1. The members of the United Nations Human Rights Committee met outside formal Committee session in Geneva, Switzerland in July 1996 to discuss possible changes in the Committee's procedures. The agenda of the meeting was based on the July 1996 report of the informal working group on procedures. However, the discussion did not cover all the topics in the working group's report, nor was it limited to those topics.

2. The decisions made at this meeting are set out in the present report. The participants affirmed that these are not formal Committee decisions, but that they should be considered for adoption at the next session of the Committee.

3. The format and paragraph numbering in the present report are independent of those in the working group's report.

I. STATE PARTY REPORTS

A. Format and focus of periodic reports

4. The article-by-article format for State party reports should be maintained. States should be encouraged to identify for themselves problems that they are encountering in their attempts to comply with the Covenant.

5. The Secretariat should send out reminders to States one year in advance of the due date for the periodic report, and should attach the Committee's concluding observations made in relation to the State's previous report. The Committee should make specific reference to these concluding observations and ask the State to address them. This will enable the Committee to direct its attention to the most important issues regarding a State's compliance.

6. The Committee should amend its guidelines accordingly.

B. The Committee's modus operandi in dealing with State reports

7. The Committee should continue its practice of deciding at each session which State reports will be examined two sessions ahead.

8. For each State whose report will be examined two sessions ahead, three Committee members should be selected as responsible for determining the main areas of concern. This group of three is not intended to supplant the article 40 working group, which undertakes many additional functions. One of the three should be designated the Country Rapporteur, whose functions will include identifying issues, informing the other members of substantive determinations and drafting concluding observations.

9. The group of three should receive all materials on the State well in advance of the Committee's discussion on the State's report. The group should also seek information from NGOs. After reviewing the materials, the three should agree among themselves on the main areas of concern on which review should focus.

10. The Committee should experiment with a new procedure in which the Country Rapporteur would join the article 40 working group to discuss and decide on the questions to be put to the given State and the order in which they are to be put. This schedule of questioning should be determined in the Committee's session preceding the session at which the given State's report is to be examined.

11. In questioning the State, the Committee would deal first with the main areas of concern as set out in the written questions, with follow-up questions on those issues only. It would then follow the normal groupings of issues.

12. A similar procedure should be followed with initial reports.

13. The normal time period to be spent in consideration of any State report should be two meetings (that is one day). Three meetings should be the maximum.

14. The Committee's Chair should exercise the power to organize questioning by issue, and to limit the time allowed for any question. Moreover, members of the Committee should exercise self-discipline in questioning State delegations. Members should avoid repeating a question that another member has already put and that has been answered. A member who wishes to express support for another member's question or comment should simply do so without restating the substantive point. Members should avoid mixing questions and comments during questioning of States parties. Also, members should notify the Chair in advance of absence for a substantial period of time and a member should always be present when a State responds to a question that this member has tabled.

15. The Country Rapporteur should distribute a draft of the concluding observations well in advance of the discussion. Members who wish to make amendments to the draft should submit them to the Country Rapporteur in advance in writing.

C. Standards for special reports

16. The following conditions should be necessary for the Committee to request a special report:

(a) There must be an emergency situation. The emergency must exist in the view of the Committee regardless of whether the State has declared an emergency situation;

(b) The State must possess a government capable of producing a report. Otherwise, it is pointless to request one;

(c) A request for a special report should be based on a reasonable likelihood that it will be a positive contribution to the situation in the State concerned. It should fit into the framework of preventive measures, as indeed do periodic reports. The request should thus have a preventive quality.

17. Any Committee member may suggest - to the Chair or to a Bureau member - a suitable case for requiring a special report. The Bureau of the Committee should make recommendations to the plenary Committee, which would make all decisions on the need for a special report. If the Committee is not in session, the Chair should attempt to consult with members before deciding to ask for the special report.

18. The decision to request a special report will be made in public session unless the Committee decides otherwise.

D. Delinquent reports

19. A State that presents a report many years late may already - under the five-yearly periodic schedule - be due to present one or more subsequent reports. In the past, the Committee has asked for the next report within a year or so, thus pressing the State to "catch up" with its schedule. It would be more effective to revise the State's reporting schedule, as follows:

(a) The five-year period between reports should not be counted rigidly from the date when a State submits a report to the date when the State is expected to submit its next report;

(b) Where a State has submitted a report close to the due time, the Committee would normally require this State to submit its next report five years after the Committee considers its current report;

(c) When a State submits a report several years late the Committee should have considerable discretion in determining when the next report is due. The Committee would normally require the next report four years after it considers the current report, but this will depend upon the circumstances.

20. To exert pressure on States to submit reports, the Committee should publish a list of States that are late in presenting their reports. The list will show which report the State should have presented next (initial, second, etc.), and how many years, in total, that report is overdue. Only the next report will be listed. States will be listed in order of delinquency, with the most delinquent at the head of the list.

21. The Committee should prepare a special list of States that are more than 10 years late in presenting a report. There should be a standing rule that the Chair of the Committee presents this list to the press.

22. In requesting and scheduling reports for examination, the Committee should give priority to those reports that are the longest overdue.

23. If a delinquent State has not presented any report by the date of the scheduled examination, the Committee should issue a statement expressing

concern at the State's lack of cooperation with the Committee. Such statements should be reproduced in the Committee's annual report.

II. COMMUNICATIONS UNDER THE OPIONAL PROTOCOL

A. Pre-sorting communications at the Secretariat level

24. To ensure proper identification and registration of communications, the following should apply:

(a) Every communication that reaches the Secretariat should be numbered and registered upon arrival. This numbering and registration should not depend upon any preliminary determination by the Secretariat that a communication is worthy or serious, as the task of making such determinations is the function of the Committee;

(b) The Special Rapporteur for new communications should from time to time look through the communications waiting at the Secretariat. This should not be seen as either invading the province of the Secretariat or showing a lack of confidence in the Secretariat's abilities. Rather, it reflects the Committee's responsibility for dealing with communications. The purpose of examining these communications is to inform the Committee, not to monitor the Secretariat.

25. To ensure that communications reach the most appropriate treaty body the Committee should be aware of the guidelines and procedures of other treaty bodies dealing with individual communications. The Committee should coordinate with the other treaty bodies and the respective Chairs should meet regularly to improve coordination.

B. Streamlining the consideration of communications: the role of the Working group

26. If the working group on communications finds a communication admissible, there should be no change in the present procedure. As at present, the working group on communications will not make final decisions on the merits of the communication.

27. The working group on communications should draw the attention of members of the Committee to any communication that it has found admissible in part and inadmissible in part.

28. If the working group on communications finds a communication wholly inadmissible, it should circulate the draft of its decision among the Committee members early in the session in advance of the meeting at which the Committee will be considering the communication. The Chair should set a date, at least one week from issue of the draft, by which any objection, outlining the points of contention, must be formally presented. If a Committee member presents a formal objection to the draft by the due date, the Committee shall consider the draft. However, if no Committee member has presented any formal objection by the due date, when the draft comes to the Committee there shall

be no discussion. The Chair of the Committee shall simply declare that there is no objection to the draft, and that the communication is therefore inadmissible.

29. The Committee in plenary will always review any decision of the working group. Accordingly, the recommendations contained in paragraphs 27 and 28 above can be implemented without amending the rules of procedure of the Committee.

30. The Committee should carry out a one-year experiment in applying the recommendations contained in paragraphs 27 and 28 above to the merits stage, as well as the admissibility stage, of communications. The experiment might include bringing in other members to work with the working group on communications on specific cases. The experiment should be confined to ordinary cases, with especially complex cases continuing to be processed as at present.

C. Procedural aspects

31. The requirement of exhaustion of domestic remedies should be implemented as follows:

(a) A State has six months from the date of notice of the filing of a communication to raise the objection that domestic remedies were not exhausted. The note verbale will notify the State of this requirement;

(b) This does not require any change in the Committee's rules of procedure.

32. The Optional Protocol does not require admissibility and merits to be addressed separately. The presumption should be changed, so that unless a State specifically requests that admissibility and merits be addressed separately, the State must address both elements together. A State should have three months from the date of notice of the filing of a communication to request a preliminary decision on admissibility and to raise any objections to admissibility.

33. A State should have six months from the date of notice of the filing of a communication to address all questions of admissibility and merits. A State's request for a preliminary decision on admissibility does not extend this six-month limit.

34. Issues of compliance with time limits should be dealt with as follows:

(a) Procedural consequences should be attached to the failure of States and individuals to comply with time limits, and the parties should be advised of these consequences by letter in each case;

(b) Both sides should be free to request reasonable extensions, but only if requested a reasonable time prior to the due date;

(c) Time limits should be enforced even before the communication has been referred to the Committee or the working group of the Committee. Consequently, the powers of the Special Rapporteur for new communications should be expanded to include the authority to grant extensions.

35. Appropriate changes should be made in the rules of procedure of the Committee.

D. Strengthening the fact-clarification process

36. Holding an oral hearing in the consideration of a communication could, in some cases, strengthen the fact-clarification process, and does not appear to conflict with the requirement of article 5 of the Optional Protocol that the Committee consider communications "in the light of all written information made available to it". An oral hearing may be viewed as a way of casting light on the written information made available to the Committee. In an era of digitized records of the spoken word, the definition of "written" must be rethought. Generally, the Covenant and Protocol are a framework for the development of human rights, and the Committee should build on and around article 5.

37. The decision to hold an oral hearing should be made only by the plenary Committee.

38. An oral hearing should be held only on the merits, not on admissibility.

39. The Committee should decide to hold an oral hearing only if the author, the State, and the Committee all agree that it is appropriate in the given case.

40. The Committee may draw no adverse implications from a State's or an author's refusal to accept an oral hearing.

41. To guard States against pressure to accept an oral hearing in popular cases, the Committee should always publicly present a decision to hold or not to hold an oral hearing as being the decision of the Committee.

42. If oral hearings are held, they should be transcribed in accordance with the Committee's guidelines and attached to the written record.

43. The Committee should request the working group on procedures to develop rules to govern oral hearings.

E. Strengthening the follow-up process

44. To improve the follow-up of State responses to the Committee's findings of violations of the Covenant, the following procedures should be implemented:

(a) The Committee should emphasize the existing requirement that a State should include in its periodic report an account of how it has responded to the decisions of the Committee on individual communications;

(b) Under the new procedure whereby the examination of a State's reports follows the order of importance of the issues, a serious failure to respond adequately to decisions of the Committee on individual communications should appear in Part 1 of the questions. Any such reference to an individual communication should be accompanied by a summary of the case.

(c) The Committee should enlist the support of NGOs in following up State responses to its decisions on individual communications.

45. While the Committee is generally recognized as having authority to determine that a violation of the Covenant has occurred, the authority of its views on an appropriate remedy is less widely accepted. Consequently:

(a) When the Committee finds that a violation of the Covenant has occurred, it should exercise prudence in prescribing a specific remedy;

(b) The Committee should stress the obligations of States under the Covenant to provide an appropriate remedy for any violation.

F. Confidentiality of communications

46. Article 5 (3) of the Optional Protocol requires confidentiality only for closed meetings of the Committee. All other information relating to the proceedings of the case should be public, unless the author or the State requests confidentiality and the Committee grants the request.

47. Rules of procedure 95 and 96 should be amended accordingly.

G. Dissenting and separate opinions

48. An individual opinion, whether dissenting or simply separate, should result from participation in a proper dialogue and discussion of the issues. A non-participating member should not be permitted to attach an individual opinion. The Chair should determine whether a member has participated sufficiently to justify attaching an individual opinion.

III. GENERAL ISSUES

A. Interns and externs

49. The Secretariat is responsible for the selection of interns, and interns should continue to be placed with the Secretariat. It is important to specify the proper qualifications, role and use of interns, and their relationship to the regular staff of the Secretariat.

50. Interns should possess at least a basic professional degree and preferably two working languages. For the Committee's work a law degree or legal training is as a rule essential.

51. Ideally, an intern should serve for at least one year. This would require a waiver of current Secretariat rules. Funding would be needed to support an intern for such a period, and the Committee should explore the possibility of funding from independent sources. Such funding should not

be channelled through the United Nations. The Committee should select its funding sources with a view to maintaining its independence.

B. Summary records and Committee yearbook

52. The summary records of the proceedings of the October 1993 session should be transcribed from tape to written record. The Committee should prepare these records from its own resources, and negotiate with the Secretariat for these to be accepted as official records.

53. The Committee yearbook is important as the only single source of information on the entire work of the Committee, and its continuing and timely publication must be ensured.

C. Greater publicity for the work of the Committee

54. Greater publicity is needed for the work of the Committee, particularly to ensure that materials reach NGOs and local media in the reporting State. It would help to have materials available on a Home Page for the Committee on the World Wide Web.

55. The presentation and circulation of the work of the Committee need improvement. The annual report is unattractive in format, and does not adequately present the work of the Committee to a larger public. Since the Committee is constrained in the annual report to the uniform format of United Nations documents, it should explore the possibilities of issuing its own more readable and attractive publications. It would be particularly valuable for the Committee to publish a booklet of its general comments, in order of the Covenant articles, with annotations of cases citing the general comments.

D. General comments

56. The process of development of general comments should be streamlined. A member may be appointed with special responsibility for exploring the need for new or revised general comments. One or two other members might cooperate with and assist this member. At each session there should be a general discussion regarding which provisions of the Covenant should be the subject of a general comment, and the member with special responsibility would report on this to the Committee at the next session.

57. General comments constitute a jurisprudential commitment, making it difficult for the Committee to take a different view later. Therefore, in areas where there is little established jurisprudence, there is a danger that a general comment may take an unrealistic view that will not be sustainable in an actual case. Consequently, the Committee should be prudent in taking up and dealing with a matter for a general comment when the jurisprudence of the area is not highly developed.

58. A general comment need not necessarily deal with an entire article of the Covenant. In fact, in some cases it might be advisable to take up only a special issue under a particular article of the Covenant.

E. Links to other human rights treaties and treaty bodies

59. The Committee may be affected by the work of the more specialized human rights treaty bodies, but should be mindful that it has authority only to interpret and apply the International Covenant on Civil and Political Rights. The standards of human rights protection under the various treaties are not identical, and while it may be regrettable that States have not rationalized their obligations, the Committee cannot do this on their behalf. Consequently, the Committee should take care not to sow confusion by reference to the decisions of other treaty bodies. Nevertheless, if another treaty body develops an appropriate jurisprudence, the Committee may draw upon it in appropriate circumstances, although preferably without citing.

60. The Committee should keep itself informed of the work of the other treaty bodies. For the sake of the many States parties to several instruments, the Committee should avoid conflict with the work of other treaty bodies when possible. The Committee should once again attempt to establish rapporteurs to set up communication with each of the other treaty bodies.

61. Other human rights treaties are relevant in the context of reservations. There is particular concern with States that have made reservations to the Convention on the Elimination of All Forms of Discrimination against Women with regard to obligations that they had accepted without reservation under the International Covenant on Civil and Political Rights. The Committee should press such States to clarify their position with regard to the rights at issue, reaffirming that a reservation to another human rights treaty cannot in any way diminish the obligations of a State under the Covenant.

Appendix

TOPICS ON THE AGENDA NOT DISCUSSED AT THE MEETING

I. NGO INPUT: HOW CAN IT BE IMPROVED, IS GREATER INSTITUTIONALIZATION POSSIBLE AND ADVISABLE?

1. There is a problem of lack of systematic communication with national NGOs. Often, the only communication stems from contact between individual Committee members and NGOs of which they are personally aware. Materials from NGOs relating to a State report frequently reach the Committee so close in time to the examination of the report that it is impossible to make full use of the materials. Often, there are no NGO reports at all from the States where such reports would be most helpful to the Committee. NGOs in other States submit voluminous, unfocused reports.

2. The Committee should insist that States make their reports fully public and available to local NGOs well in advance of the Committee's examination. This will be more feasible if the Committee adopts the proposal of the working group on procedures that State reports to be examined should be listed two sessions ahead.

3. NGOs, and foundations that fund NGOs, should be made aware of the Committee's needs with regard to the substance of reports and the manner in which they should be prepared.

4. The Committee should propose to foundations that they consider funding NGOs to prepare reports responding to State reports in appropriate cases.

5. The Committee might request international NGOs that maintain a database of national NGOs to forward letters to the latter, informing them that the Committee will be examining a given State's report. Several NGOs are likely to assist in this way, including Amnesty International, the International Federation of Human Rights Leagues and International Service for Human Rights.

6. The Secretariat might possibly develop its own database of NGOs that could be regularly informed of the Committee's pending programme of examination of State reports.

7. In order to explore other possibilities of useful contacts with NGOs:

(a) The Committee should set aside slots of time during sessions, e.g. lunchtime, to enable members of the Committee to meet informally with NGOs;

(b) Members of the Committee should be open to the possibility of making visits to States in order to inform local NGOs about the provisions of the Covenant or to receive information from them regarding local conditions. Such visits may have to depend upon funding outside the United Nations.

II. ACTION ON A STATE RESPONSE TO THE COMMITTEE'S CONCLUDING OBSERVATIONS; STATE OBLIGATION TO PUBLISH THE COMMITTEE'S CONCLUDING OBSERVATIONS

8. The Committee should respond to a State's response to the Committee's concluding observations.

9. The working group of three (as recommended by the working group on procedures) should be entrusted with preparing the draft of the Committee's response.

10. The plenary Committee should decide on the final text to be submitted to the State.

11. The Chair should present copies of the Committee's response to NGOs and to the press. The response will also be published in the Committee's annual report.

12. The possibility should be explored of increasing awareness of the Committee's concluding observations by persuading journals to publish them.